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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967.

NO. 816

UNITED STATES OF AMERICA,

Appellee,

vs.

NATHAN SUESS, ~~ET AL,~~

Appellant.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. AND APPENDICES.

Abraham Teitelbaum,
Attorney for Nathan Suess,
Appellant - Petitioner

506 North Rexford Drive
Beverly Hills, California

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TABLE OF AUTHORITIES CITED

Cases

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Moccio v. United States, 354 U.S. 913	8

Statutes Involved

Title 15, United States Code:

Sec. 77b. Definitions.

When used in this subchapter, unless the context otherwise requires--

* * * * * * *

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participes or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess

of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

* * * * * * *

Sec. 77c. Exempted securities

(a) Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

(1) Any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days;

* * * * * * *

Sec. 77d. Exempted transactions

The provisions of section 77e of this title shall not apply to any of the following transactions:

(1) Transactions by any person other than an issuer, underwriter, or dealer; transactions by an issuer not involving any public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter and transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding

in the computation of such forty days any time during which a stop order issued under section 77h of this title is in effect as to the security), and except transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(2) Brokers' transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders.

(as in effect from 1954 to 1964)

Sec. 77e. Prohibitions relating to interstate commerce and the mails

(a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly--

(1) to make use of any means or instruments of transportation or communication in interstate commerce

or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

* * * * * * * *

The Bill of Rights

Article IV Section 1. Full faith and credit shall be given in each State to the public records and judicial proceedings of every other State.

Article IV Section 2. Assures each citizen the privileges and immunities of the citizens of the several States.

Article XIV of the Amendments to the United States Constitution. No state shall make or enforce any law which shall abridge the privilege or immunities of the citizens of the United States nor shall any State deprive any person of life,

liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967.

NO. _____

UNITED STATES OF AMERICA,

Appellee,

vs.

NATHAN SUESS, ET AL,

Appellant.

PETITION FOR A WRIT OF CERTIORARI
TO UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAY IT PLEASE THE HONORABLE JUDGES OF THE SUPREME COURT:

Petitioner Nathan Suess prays that a Writ of Certiorari issue to review and reverse the sentence of 15 months in the penitentiary imposed on March 7, 1967 by the Honorable Edmund L. Palmieri, Judge of the District Court for the Southern District of New York, and which judgment was

affirmed by the Court of Appeals for the Second Circuit on September 28, 1967. The Petition for a rehearing was denied by said Court on October 16, 1967, and this Petition for a Writ of Certiorari is brought within the statutory period.

OPINIONS BELOW

The decision of the District Court for the Southern District of New York is not reported and can be found in Appendix "A".

The opinion of the Court of Appeals for the Second Circuit will be reported in the advance sheets, and is set forth in full as Appendix "B".

JURISDICTION

The jurisdiction of this Honorable Court is invoked under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America.

QUESTIONS PRESENTED

Can a person violate the National Securities Act of 1933, when he committed no sale of any security?

Where the purported act was committed more than five years prior to an Indictment, can a person claiming immunity by pleading the Statute of Limitations, be prosecuted, tried and convicted?

Must the prosecution plead and also prove an overt act on the part of this defendant within the period of the Statute of Limitations?

Isn't Appellant Nathan Suess entitled to the equal protection of the laws as set forth in the XIV Amendment to the Constitution of the United States of America?

What overt act did Appellant Suess commit to warrant any conviction?

PRELIMINARY STATEMENT OF FACTS

The facts are quite simple and understandable. The Appellant, Nathan Suess, is innocent of any wrongdoing. He was an errand boy for a Mr. Bloom, the real owner of stock. The only fact significant to link Appellant Suess to the indictment was that Suess went to a lending institution and borrowed money on the stock and gave the proceeds to the said Mr. Bloom. Mr. Suess was neither a principal nor an agent, nor a broker for this stock.

Counsel for the Appellee in his opening statement to the Court on Page 12a of the appendix filed in the Court of Appeals stated:

"The government does not intend in this trial to prove any of the substantive counts which charge violation of Section 17 of the Securities Act."

"The next point is the conspiracy charge in the indictment which is, of course, a conspiracy to violate not

only Section 5, the sale of unregistered securities, but also Section 17."

"Also, in the interest of saving time, the Government does not intend to prove substantially a conspiracy to defraud."

"Principally this case will charge and prove a conspiracy to sell this stock without registration with the Securities and Exchange Commission." Appendix "E".

These admissions by Counsel for Appellee completely exonerates this Appellant because he neither owned nor sold any security.

The statutes set forth in this brief do not embrace this Appellant within the meaning or intent of the statutes involved.

STATEMENT

Petitioner Nathan Suess was indicted on July 14, 1964 for conspiracy, and for violating the Federal Securities Act of 1933.

Appellee admitted that Nathan Suess was not in a technical property law sense the owner of any of these worthless shares. Appellee's brief to the Circuit Court page 16.

Counsel for Appellee in their Brief to the Court of Appeals on Page 16 thereof states, "These facts, briefly summarized, more than sufficient to establish Suess' knowing participation with Schwenoha and Fox in the illegal scheme to sell the control stock to the public." No authority or reference was given. Yet, their Appendix on Page 43a, Mr. Fox, a government witness, testified as follows:

"Q. Was there any conversation as to who would share in the proceeds of any sale of stock?

A. Mr. Schwenoha and myself.

Q. What about defendant Suess?

A. I can't recall whether he would participate in that."

Query ! Is this the measure of proof sufficient to put a man into the penitentiary?

Appellant hypothicated stock belonging to a Mr. Bloom at least five years before the indictment was filed in this cause. The Government contends that another person mailed some literature concerning other stock within the statutory period. How could this Appellant Nathan Suess be affected by the acts of another, when he was neither an agent nor a co-conspirator with the said party who did the mailing? The citations given by Counsel for Appellee are not applicable to the facts at bar: The overt acts or the purported acts constituting the substantive offense committed by one acting in concert with another defendant cannot be chargeable to this Appellant.

Fiswick v. United States , 329 U.S. 211, 216 (1946).

Moccio v. United States, 354 U.S. 913 (1957)

Another Appellant, Mr. Vincent Schwenoha, has filed his petition for Certiorari in a companion case claiming that the stock involved in this case did not have to be registered since the original stock was issued prior to the enactment of the Federal Securities Act of 1933. Should this Honorable Court consider this point significant enough to grant the Writ of Certiorari in the Schwenoha case, then the Writ of Certiorari should also be issued in this cause.

Another point at this juncture is very significant. The main witness for the Government, a Mr. Joel A. Fox, testified on recross-examination as follows:

(523) * * *

Recross-examination by Mr. Rowe:

Q. Mr. Fox, you recall seeing Defendant's (524) Exhibit A which is this letter you sent to Mr. Nathan Suess?

A. Yes, I recall that.

Q. Is it a fact that you now admitted under oath that every statement in that letter is false? A. Yes, sir.

Q. Why did you mail this letter to Nathan Suess if you knew it was false? A. I believe I said earlier and I say again, Mr. Suess wanted some information that he could pass out to some of the brokers and in conjunction with Mr. Schwenoha this letter was composed bearing the statements that were made in the letter, that I made and signed and sent to Mr. Suess.

* * * * * * *

(525) * * *

Q. You deliberately gave him false information, is that correct? A. He was aware of the information.

Q. I didn't ask you that. Did you deliberately give him false information? A. Yes, sir.

CONCLUSION

In conclusion, it is respectfully urged that the District Court failed to give full faith and credit to the decisions of the Federal Courts. The lower Court erred in not dismissing the case against Appellant Nathan Suess because he commited no acts of conspiracy or any violation of the Security Act of 1933.

Petitioner has stated facts in his Petition for Rehearing in the Circuit Court in Appendix "C" which has a significant bearing on the case at bar. The Court Sua Sponte should have dismissed the case since the Statute of Limitation applies.

Appellant Suess was denied due process of law when the District Court did not order the indictment dismissed, since Appellant committed no act, overt or otherwise, within 5 years prior to the indictment filed in this cause. Appellant was not part of any conspiracy, and no person acted as his agent to bind him to some act over which he had no control.

The Statute of Limitations of five years is both a rule and by statute enacted by the Congress of the United States, effective since July 1, 1956, and the citizens of each State are entitled to the same privileges and immunities of the citizens of the several States, as guaranteed by the Constitution of the United States.

The United States Assistant District Attorney, in his opening statement, completely eliminated Appellant Suess from the case, by telling the Court that he is not attempting to prove a substantive offense or a conspiracy, but merely that stock was sold unregistered with the Security Exchange Commission. Suess did not sell any stock, and cannot be chargeable with this crime.

Petitioner, therefore, prays that this petition for a Writ of Certiorari to the Court of Appeals for the Second Circuit be granted in order to prevent a total miscarriage of justice.

Respectfully submitted,

Abraham Teitelbaum
Attorney for Nathan Suess,
Appellant - Petitioner

CERTIFICATION

I, Abraham Teitelbaum, hereby certify that I was duly admitted to practice before the Supreme Court of the United States in 1933, and that I have caused to be prepared the above and foregoing Petition for Certiorari, and that this petition is filed in good faith and is meritorious, and that the same has not been filed for any purpose of delay.

Abraham Teitelbaum

ABRAHAM TEITELBAUM
Attorney for Petitioner Nathan Suess

APPENDIX "A"

Judgment of conviction entered in the United States District Court for the Southern District of New York on March 7, 1967 before the Honorable Edmund L. Palmieri and a Jury.

The sentence imposed upon Appellant Nathan Suess was 15 months in the penitentiary and fifteen hundred dollars fine.

APPENDIX "B"

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 71--September Term, 1967.
(Argued September 25, 1967 Decided September 28, 1967)

Docket No. 31240

UNITED STATES OF AMERICA,

Appellee,

--v.--

VINCENT SCHWENOHA and NATHAN SUESS,

Appellants.

Before:

MOORE, SMITH and KAUFMAN,

Circuit Judges.

Appeal from Judgments of conviction for violating and conspiring to violate the Securities Act of 1933, 15 U.S.C. Sec. 77a, et seq.

Affirmed.

FREDERICK F. GREENMAN, JR., Assistant United States Attorney (Robert M. Morgenthau, United States Attorney, Southern District of New York, Robert G. Morvillo, Pierre N. Leval, Assistant United States Attorneys, of counsel), for appellee.

SAMUEL ROWE, New York, N.Y., for appellants.

KAUFMAN, Circuit Judge:

This appeal reveals a typical stock fraud upon the public which the Securities Act of 1933, 15 U.S.C., Sec. 77a, et seq., was designed to prevent. Vincent Schwenoha purchased in 1956 all the outstanding stock of the Belmont Divide Mining Corporation, a paper corporation that had ceased doing business in 1924. He and others devised a plan to sell this worthless stock to the public without registering it with the Securities and Exchange Commission. The corporation's name was changed to Belmont Oil Corporation, certain oil leases of unspecified value were given to the corporation to create the appearance of assets, the stock was split ten for one to create more shares to sell to the public and placed in the names of nominees to conceal the fact of control by a handful of conspirators.. Nathan Suess then joined the conspiracy and assisted in finding brokers who would sell the worthless stock to the naive and trusting public. Calling himself the public relations man for Belmont

Oil, Suess met with co-defendants Edward Cantor and Michael Canter at the office of their brokerage firm, Peerless-New York, Inc., and arranged for them to maintain a market for Belmont stock and also to sell the stock to the public. These and other brokers sold Belmont to the public for about one dollar per share by typical boiler-room methods. Eight co-defendants pleaded guilty;[1] appellants were convicted by a jury of conspiracy and also found guilty of causing unregistered Belmont stock to be mailed on July 14, August 6, and October 2, 1959 for the purposes of sale and delivery after sale.

Appellants' main contention is that the stock was exempt from the registration requirements of the Securities Act because it was issued originally in 1919, long before the passage of the Act in 1933. They rely on section 3(a)(1) of the Act, 15 U.S.C. Sec. 77c(a)(1), which exempts from

---

1 A mistrial was declared as to one co-defendant; five corporate co-defendants were tried separately.

registration "any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public,..." But, their dependence on this argument ignores the language of the remaining portion of that sentence, which states, "but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days..." It is undisputed that the sale of Belmont stock to the public was a new offering, and there is little question that appellants were issuers or underwriters. See 15 U.S.C. Sec. 77(b) (11); Securities and Exchange Commission v. Culpepper, 270 F. 2d 241 (2d Cir. 1959). The evidence is overwhelming that they and others acted together to control Belmont Oil thoroughly and completely, and that they knew the stock they sold to various brokers would be resold to the public; in truth, that was their ultimate goal.

Moreover, appellants urge that Judge Palmieri committed reversible error by not charging the jury with respect to the

applicable five-year statute of limitations. This claim is wholly without merit because it is undisputed that the mailings for which appellants were convicted occurred between July 14 and October 2, 1959. Accordingly, the acts occurred within five years of the filing of the indictment on July 14, 1964. Burnet v. Willingham Loan & Trust Co., 282 U.S. 437 (1931). Appellants call to our attention, however, that they individually did not commit acts within the statutory period. In this connection, Schwenoha urges that he testified that he withdrew from the conspiracy in March, 1959. But as we noted in United States v. Borelli, 336 F. 2d 376,388 (2d Cir. 1964), cert. denied sub nom. Cinquegrano v. United States, 379 U.S. 960 (1965), "mere cessation of activity is not enough to start the running of the statute; there must be affirmative action, either the making of a clean breast to the authorities, ... or communication of the abandonment in a manner reasonably calculated to reach co-conspirators." The record is clear that the alleged withdrawal

does not come close to meeting this test; in any event, no exception was taken to the failure to charge on the issue of withdrawal. See F. R. Crim. P. 30; United States v. Kahaner, 317 F. 2d 459 (2d Cir.) cert. denied, 375 U.S. 836 (1963). The evidence of withdrawal being insufficient to raise a question for the jury, a fortiori appellants' motion for acquittal on this ground was properly denied.

We have examined appellants' other claims and find them to be without merit. The judgment is affirmed.

APPENDIX "C"

NO. 31240

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VINCENT SCHWENOHA and
NATHAN SUESS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR REHARING
ON BEHALF OF NATHAN SUESS

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ABRAHAM TEITELBAUM
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United States Supreme Court.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VINCENT SCHWENOHA and
NATHAN SUESS,

Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR REHEARING
ON BEHALF OF NATHAN SUESS

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS:

May It Please the Court:

Nathan Suess petitions this Honorable Court for a rehearing in this cause under the rules of this Court within the 15 day period of the decision affirming the sentence of the District Court.

Petitioner's grounds are briefly and distinctly stated by counsel as follows:

Appellee has based its entire case on rumors, and upon uncorroborated testimony of another defendant to link appellant with a crime.

This Honorable Court will not send an innocent man to the penitentiary. The writer of this statement firmly believes in the cause of Appellant Nathan Suess, and that he is absolutely innocent of any criminal offense.

The purported crime charged in the indictment is one of conspiracy, and the other of violation of the provisions of the Security Act of 1933.

The Appellee admits that any purported offense committed by the Appellant is barred by the pleas of the five year Statute of Limitations. This is only the minor premise upon which Appellant relies for a complete reversal of this case as dictated by common sense and logic.

The major premise is that Appellant did not sell any security in violation of the Security Act of 1933.

The Appellant did a certain Mr. Bloom a favor by going

to a factoring house and borrowing $10,000.00 on the security which Appellant did not own, and he turned over the proceeds to the real owner, Mr. Bloom. Query! When or where did title to this security pass? It is fundamental that in any sale there must be a transfer of title. This was merely an hypothication of stock and not a sale within the meaning of the Security Act of 1933. Appellee failed to prove any crime against Appellant.

The above is the whole truth and in seeking out the truth, Appellant shall be free.

Emil Zola, in the defense of Dreyfus, stated,

> "When truth is driven underground, it will grow and grow to such luminous proportions, that when it bursts forth it will carry everything asunder."

The animus furandi or criminal intention to commit the crime is entirely lacking as to Appellant Suess.

This Honorable Court was led to believe that Appellant

Nathan Suess joined a conspiracy, and assisted in finding brokers who would sell this worthless stock. This conclusion is not borne out by the evidence. Mr. Suess was never a public relations man. He met the Cantors only once in his lifetime to corroborate the fact that he sold an oil lease for a Mr. Bloom. He was never in the boiler room business. It was common knowledge that Suess was in the business of buying and selling oil leases and options and that he was not in any stock business of any kind.

This confusion arises from the fact that Mr. Samuel Rowe, counsel for Vincent Schwenoha, agreed to represent Mr Suess without any fee because Suess was penniless. In fact, he has appealed under forma pauperis, and the financial situation of Seuss is still desperate and unchanged.

To illustrate the point that Appellant Suess is a victim of guilt by association, counsel for the Appellee stated in his brief on page 8 that Suess sold 100,000 shares to Carlton at 10 cents a share etc., and cites the record. The

examination of the record does not bear out this assertion as a fact. The record is contrary to what counsel for Appellee has stated. The exhibit shows that a check, Gov't. exhibit 149, was made to a Harold Green in the amount of $1200.00. What does this exhibit prove? It is the humble opinion of counsel for Suess that this exhibit was confusing to the Court and to the jury and had no probative value to prove any crime.

Counsel for Appellee on page 9 of his brief stated as a fact that Suess received $2,500.00 from the sale of selling the Belmont stock. The record on page 58a and page 59a, of Government's brief shows that Suess did receive $2,500.00 from a Mr Reiter, but for what? This was not for any commissions on the sale of stock, but for money borrowed (147a, 148a). Finally, the contention, by counsel for Appellee on page 16 of his brief, that Mr. Suess was a partner with Schwenoha, and that he had an agreement for division of the proceeds of the worthless stock, has no

foundation in fact, and should have been stricken from the record. This was highly prejudicial.

Counsel for Appellee has tried to confuse this Honorable Court by taking facts out of context. His appendix is confusing.

Appellee stated in his brief on page 8 that Nathan Suess sold 100,000 shares of stock. This is absolutely not a fact. Nathan Suess borrowed money on stock as an accommodation to Mr. Bloom more than five years prior to this indictment. U.S. Appendix 150a, 151a.

The Decision of the District Court should be reversed as to Nathan Suess.

Respectfully submitted,

/s/ Abraham Teitelbaum
ABRAHAM TEITELBAUM

COUNSEL'S CERTIFICATE

Abraham Teitelbaum hereby certifies that the above petition for rehearing is made in good faith and not for purposes of delay pursuant to 2nd Circuit Rule 25(a):

/s/ Abraham Teitelbaum
ABRAHAM TEITELBAUM

Associate Attorney with
SAMUEL ROWE
for Nathan Suess, Appellant.

EXHIBIT "D"

(1014) * * *

NATHAN SUESS, a defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

* * * * * * *

(1033) * * *

Cross-examination by Mr. Shaw:

Q. Mr. Suess, you remember a man named Ed Cantor who testified as a witness in this case? A. Yes.

Q. You knew him in 1958, did you not? A. I met him once, once or twice.

Q. Was it once or twice? A. I don't recall.

Q. Where did you meet him? A. In his office.

Q. That was an office called Peerless-New York? A. Yes.

Q. In the Empire State Building, correct? A. Yes.

Q. That was a brokerage firm? A. That's right.

(1034) * * *

Q. Do you recall any occasion in 1958 when you visited the Peerless-New York office? A. Yes.

Q. In the Empire State Building, correct? A. Yes.

Q. That was a brokerage firm? A. That's right.

* * * * * * *

(1034) * * *

Q. Do you recall any occasion in 1958 when you visited the Peerless-New York office and spoke to Ed Cantor and told Ed Cantor that you were the public relations man for Belmont Oil? Do you recall that?

A. No, I don't. I can't say truthfully. I don't remember.

Q. Do you deny, sir, that you told Ed Cantor that you were the public relations man for Belmont (1035) Oil?

A. I'm not denying it, but I don't remember ever saying it.

* * * * * * *

(1038) * * *

Q. Did you ever meet a man named Donald Duncan from Globe Securities? A. Yes.

Q. When did you meet him? A. Mr. Hammerling introduced me to him. We were having coffee.

(1039)

Q. The question was when did you meet him?

A. 1958.

Q. Did you discuss Belmont Oil with Donald Duncan?

A. Not to my recollection. Mr. Hammerling did, but not me.

Q. Did Mr. Hammerling discuss it in your presence?

A. I can't remember if he said it in front of me or if he said it before, but I met Mr. Duncan once in a restaurant there.

* * * * * * *

Q. Do you know a man named Morris Reiter?

A. Yes.

(1040) * * *

Q. How many times altogether did you meet Mr. Reiter? A. I met him--he came to Los Angeles on other business.

Q. How many times did you meet him in New York? A. In New York? A few times.

Q. Was Mr. Schwenoha ever with you when you met (1041) Mr. Reiter in New York? A. Yes, once.

Q. Where was that? A. Not only Mr. Schwenoha was with him but Mr. Fox was with him and Mr. Hammerling. We were all together.

Q. When was that? A. We had an occasion to meet him.

Q. There was an occasion in 1958 when you, Mr. Schwenoha, Mr. Fox and Mr. Hammerling all met with Mr. Reiter? A. Yes.

* * * * * * * * *

(1043) * * *,

Q. My next question, Mr. Suess, is on that occasion did you have a discussion concerning Belmont Oil stock? A. Mr. Fox did and Mr. Hammerling did.

* * * * * * * * *

(1044) * * *

Q. Did Morris Reiter ever pay you any money?

A. I saw a check.

Q. My question is: Did Morris Reiter ever pay you any money? A. I borrowed money from Morris Reiter.

Q. When was that? A. Could have been the end of 1958 or 1959. The beginning of 1959. Could have been either.

Q. How much money did you borrow from Morris Reiter? A. I don't believe it was a personal loan.

(1045)

Q. Now, I didn't ask you that, sir.

How much money did you borrow from Morris Reiter?

A. I don't know except--I really don't know. I can't answer that question. I don't know. If I had anything to refresh my recollection I would be too happy to answer.

Q. He gave you cash? A. No.

Q. What did he give you? A. Morris--Mr. Reiter always gave me a check.

Q. A personal check? A. I don't know. If it was a company check, it could have been a company check or whatever it was. If he did give it to me.

Q. But it was a check? A. It was a check, if he did give it to me.

Q. Not a bank draft, a check? A. It could have been a bank draft.

* * * * * * * * *

(1058) * * *

Q. Wasn't there a time late in 1958 or early in 1959 when you and Mr. Fox and Mr. Schwenoha and a man who had been with Mr. Shomberg several days before went together to Carlton Securities? Didn't that happen? A. No. I don't think we went to Carlton. We went to some other place but I don't think it was Carlton.

The Court: Where was it?

The Witness: In New Jersey.

The Court: Jersey City?

The Witness: I don't know the name.

The Court: What was the name?

(1059)

The Witness: I don't know.

The Court: Was it a stockbroker?

The Witness: It was, but not Carlton.

The Court: In Jersey City?

The Witness: In Jersey City.

Q. What were you doing at that stockbrokerage office? A. Somebody took us up there and I just sat down with them.

Q. Who took you up there? A. I don't remember the name.

Q. Fox was there? A. Yes.

Q. Schwenoha? A. Yes. But I don't remember who took us up there.

* * * * * * * * *

(1063) * * *

Q. Back to that trip to Jersey City, do you deny as you sit here today that that was Carlton Securities to which you went today? A. Do I deny it?

Q. Do you deny that it was Carlton Securities to which you went that day? A. Do I deny? I know it was not Carlton Securities because they told me it was not.

Q. I see. A. Not me.

Q. Who was it who told you this is not Carlton Securities? Who told you that? (1064) A. Someone said it.

Q. You were sitting around and out of the clear blue sky someone said, "Nate, this is not Carlton Securities"? A. I don't know who Carlton Securities was when I went there.

Q. I'm asking you who told you that the place you were at was not Carlton Securities? A. I can't recall who said it to me.

Q. But you are sure as you sit here today that

somebody told you that? A. I'm not sure of anything.

Q. Let's get back to Stanley Younger and the Navarro Hotel.

Did there come a time in the spring of 1959 when you met Stanley Younger at the Navarro Hotel? A. Yes.

Q. Was Taylor there? A. Taylor was there first.

Q. Was Shomberg there? A. Shomberg came up later. He always visited.

Q. Did you, Taylor, Younger and Louis Shomberg have a conversation that day at the Navarro Hotel? (1065) A. I had a conversation with Mr. Taylor. Then Younger came in. Mr. Shomberg was talking to somebody else. There was a couple of people up there. He was not in on the conversation.

Q. Was Mr. Shomberg in the room? A. Mr. Taylor--

Q. The question is was Mr. Shomberg in the room? A. He was in the room.

Q. Who else was there? A. Taylor, Mr. Younger.

Q. And you? A. Mr. Heyman, and I believe another party.

Q. Who? A. I don't remember the other party. I know that conversation distinctly--not distinctly, I can't remember a lot of it.

Q. Was there a conversation in that room that afternoon when you were present, when Shomberg was present, when Taylor was present and when Younger was present, about Belmont Oil Corporation? Yes or no.

A. Yes.

Q. Tell us what the conversation was.

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(1067) * * *

A. Mr. Taylor said to me, that's what I tried to say at the beginning, he said, "I understand you have 100,000 shares."

I says, "I do, but it don't belong to me. It's up in Judson Financing Company."

He asked me what I wanted to do with it and Younger was sitting there and I said, "I don't care what they do with it. It don't belong to me. I have not the $10,000 and the interest money to pay for it. It don't belong to me."

Q. Go ahead. A. Then Younger left. He says, "I will talk (1068) to you further." And he left. Words to that effect.

Q. Did you agree with Younger that day to sell to him 100,000 shares of Belmont stock? A. I didn't agree to anything.

Q. So your answer is no? A. I didn't agree to anything. As far as I can recall I didn't agree to anything. I just told him it was up at the financial company. That's the only 100,000 shares that is in my name and it belonged to Mr. Bloom.

Q. Did you ever deliver 100,000? A. I never took the stock out. I never delivered anything.

(1089) * * *

Q. Is it your testimony that you never participated in any deal to sell Belmont Oil stock to Carlton Securities? Yes or no. A. No. I never participated to sell them any stock.

Q. Did you ever receive any money on any sale of stock to Carlton Securities? A. So far as I can remember, no.

Q. Do you know a man named Harold Green? A. I don't believe I do.

Q. Did you ever know a man named Harold Green? A. I don't believe I do know him. If I seen him I would be able to say yes or no.

(Government's Exhibit 149 marked for identification.)

Q. Mr. Suess, I show you 149 for identification. I direct your attention to the back of that. Look at the back for the moment and I ask you if (1090) that's your signature. A. It looks like mine.

Q. Do you have any doubt about it? Look at the back and not the front. Is it or is it not your signature, Nate Suess? A. That does not look like my signature. I never sign my name that way.

Q. I am directing your attention to the words that I am pointing out, "Nate Suess." Is that your signature? A. It looks like mine.

Q. Is it? A. I don't think I write an N this way.

Mr. Shaw: Please mark these for identification.

(Government's Exhibit 150 marked for identification.) (1091)

Q. Mr. Suess, you testified that you stayed on a number of occasions in the spring of 1959 at the Hotel Navarro, is that right? A. That's right.

Q. Look at the signature on those cards and tell us if those are your signatures. A. Yes, that is my signature.

Q. That is the same signature that appeared on the back of Exhibit 149, is it not? It is your signature, isn't it? A. It looks like it.

(1092) * * *

(Government's Exhibits 149 and 150 for identification received in evidence.)

Q. You testified under oath here that you never got any money from Carlton Securities, is that right?

A. That's right.

Mr. Shaw: Ladies and gentlemen, Government's Exhibit 149 is a check drawn on the First National Bank of Jersey City, New Jersey, dated May 4, 1959, stamped at the top Carlton Securities and the check is payable to Harold Green in the amount of $1200, signed Edward J. McDonald as authorized signature, the signer on behalf of Carlton.

On the back it bears the endorsement Nathan Suess. On the other side it says at the top "Harold Green" and below "Credited to the account of Nathan Suess.

* * * * * * * *

APPENDIX "E"

(3)

Mr. Shaw: Next, your Honor, the indictment itself as it applies to these three defendants, first of all, since the defendants charged in this indictment as operators of brokerage houses have all entered pleas of guilty, the government does not intend in this trial to prove any of the substantive counts which charge violation of Section 17 of the Securities Act. That means at this time the government moves to sever from the trial of this (4) case Counts 23 through 44, which are the counts specifically charging fraud in the sale of securities.

In the interest of saving time and avoiding proof which directly relates only to those who pleaded guilty, we are moving to sever those counts.

The Court: Very well, the motion is granted.

Mr. Shaw: The next point is the conspiracy charge in the indictment is, of course, a conspiracy to violate

only Section 5, the sale of unregistered securities, but also Section 17.

A number of paragraphs in the conspiracy indictment describe the charge against all these defendants of conspiring to defraud as well as conspiring to sell the securities of Belmont Oil without registration with the Securities and Exchange Commission.

Also, in the interest of saving time, the government does not intend in this case to prove substantially a conspiracy to defraud. Principally this case will charge and prove a conspiracy to sell this stock without registration with the Securities and Exchange Commission.

I do not mean by saying this to limit the government from proving any conspiratorial acts to (5) defraud. However, we have problems with victim witnesses around the country. We may not finally get the people who would testify to the actual fraudulent statem ents and therefore in my opening statement I do not intend to refer to this

as anything other than a conspiracy to violate Section 5 and I merely want to call to your Honor's attention the fact that paragraphs 4, 5, 6 7Q and 7R of this indictment allege it was part of the conspiracy that the defendants would defraud the public in the sale of stock by making false statements.

If your Honor intends in his opening remarks to the jury to outline a bit for them what the indictment is about, I would suggest it might be well not to go into this because the government, as it need not, will not be proving that part of the conspiracy in this trial. I don't intend to refer to it in my opening.

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